



# HELSINKI COMMISSION BRIEFING

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UNITED STATES COMMISSION ON  
SECURITY AND COOPERATION IN EUROPE

## Testimony :: Katie Fox

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Thank you to the Commission and thanks to Deputy Assistant Secretary of State Tom Melia and Opora for an interesting presentation on the problems that plagued this election. NDI has observed similar problems, pointing to an election that is not democratic and constitutes a setback for Ukrainians' Euro-Atlantic aspirations. I will use my time to place the election in the context of Ukraine's longer term democratic development. NDI works to promote democratic institutions in more than 70 countries worldwide, including many with far gloomier democratic prospects than Ukraine's. In Ukraine, NDI has for more than 20 years supported the growth of strong political parties, civic groups, and a representative parliament, as well as monitored elections.

Democracy is about more than elections, as Ukrainian President Viktor Yanukovich has implied in describing Ukraine's aspirations to meet European Union democratic – not just electoral - standards. Democracy means: a pluralistic political system in which political parties represent a range of citizens' views; representative legislatures that serve as genuine forums for debate, a robust civil society, free media, transparent and accountable government, the rule of law and an independent judiciary, among other things. Yet elections provide a clear snapshot of the state of democracy. So what have the recent elections told us about Ukraine's democratic trajectory?

On one key measure, political pluralism, Ukraine fared reasonably well. Even though they did not compete on a level playing field, opposition parties are likely to be well represented in the new parliament. In addition, because of a protest vote against established groups, new parties like Svoboda and Udar will now have seats. It appears that despite the extensive voter bribery and misuse of government resources in the campaign documented by Opora and others, many citizens simply decided to vote their consciences. Ukrainians are asserting their rights as citizens, which is a healthy sign for the country's democratic future.

In a related development, parties and candidates campaigned on issues to a greater extent than in the past, giving voters real choices. Poll after poll has shown that Ukrainians are frustrated with their leaders and yearning for new policy ideas as well as new faces. This election tentatively indicates that parties are beginning to respond.

In addition, the Ukrainian government, to its credit, discussed with NDI and other domestic and international groups concrete steps to improve the media environment prior to the election.

The Ukrainian government also welcomed more than 4,000 international monitors on election day. But it is important to recognize that all election monitoring is not created equal. For example, monitoring only election day but not the campaign period, produces a much distorted picture. To limit this and other misleading practices, NDI helped to initiate the Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers, which was launched in October 2005 at the United Nations and is now endorsed by 42 intergovernmental and international nongovernmental organizations. The code of conduct for observation missions fielded by the Organization for Security and Cooperation in Europe (OSCE) contains most of the same principles. Unfortunately, many of those monitoring in Ukraine this time did not follow either set of principles.

Turning to the election's clearly negative effects on democratic progress, there is a consensus among credible international and domestic observer groups that these elections were a "step backwards." Opora, which fielded the largest delegation of nonpartisan monitors, has described the problems well. I will expand on one general point. In assessing the campaign environment in September NDI pointed to a lack of confidence in Ukrainian leaders, parties and other political institutions. This has worsened over the electoral period. The election produced surprisingly high margins for "outsiders" with little history in government, such as Vitaly Klitschko's Udar party and Oleg Tyahnybok's "Svoboda."

NDI noted suspicions that parties were manipulating selection processes for election commissioners to secure additional spots. Anger at commission bias later escalated to the point of violence during vote counting in some districts. In response, a furious opposition threatened a parliamentary boycott. Although the opposition eventually decided to take its seats, the parliament will convene under a lingering cloud that may poison cooperation.

In testimony before the Helsinki Commission last May, NDI listed threats to democracy in Ukraine. That list is substantially unchanged. NDI noted a significant decline in the protection of democratic rights, including emerging threats to the freedom of assembly. More fundamental is the danger of consolidation of political power within the executive branch and a single political party. In this context, we referred to legislation passed in 2010 to strengthen the presidency, flawed local elections that were won overwhelmingly by the Party of Regions and the politicization of the judiciary.

Today there is one more potential red flag. Government critics have long speculated that the Yanukovich administration would seek constitutional changes to enhance the power of the presidency. Until last week, amending the constitution required the support of two-thirds of the Rada, a supermajority which it appears the government did not achieve. But on November 6, the Rada passed, with just 10 minutes of debate, legislation that had been languishing in parliament for two years that changed the constitutional amendment process to introduce a national referendum and eliminate the need for a two-thirds majority. Now, the president may

put a proposed change to a national referendum with the support of a simple parliamentary majority.

Without passing judgment on the merits of national referenda per se, it is reasonable to wonder about the circumstances under which the constitutional amendment procedure was changed. The opposition has cried foul. The burden is now on Ukraine's leaders to regain their confidence by demonstrating that there is a legitimate reason for the sudden change.

What else can Ukraine's leaders do going forward to reassure and reunite Ukrainians as well as the international community?

In the short term:

1. The election authorities, police and the prosecutor's office should investigate all credible claims of electoral fraud and fully prosecute all violations.
2. In seeking a resolution in districts where the vote is still in dispute, the government must follow the letter and spirit of Ukrainian law and seek to respect the will of the voters. Any plan would ideally follow international practices and standards on electoral dispute resolution and satisfy credible nonpartisan observers.
3. A certain amount of bargaining is part of parliamentary faction formation. However, all parties should refrain from using corrupt or unethical methods – bribes or threats – to induce Members of Parliament (MPs) to join factions. Such behavior has historically been used to distort election results and is guaranteed to trigger suspicions in Ukraine and the international community.
4. Rada leaders should examine the rules of procedure to ensure that some leadership positions, such as substantive committee chairmanships, are reserved for opposition MPs. More substantial opposition involvement will promote more trust and confidence in the deliberations of the Rada.

In the longer term:

1. Legislative or constitutional changes affecting the structure of power, rights of the opposition or electoral conditions should be the subject of full, transparent and inclusive debate. Opposition parties and civic experts should be included. This applies to administrative reform, and changes to the presidential election law and election calendar.
2. The government should put an immediate stop to politically motivated prosecutions. NDI joins the widespread call for the release of former Prime Minister Yulia Tymoshenko and Interior Minister Yuri Lutsenko, along with other political opponents imprisoned on questionable grounds. As long as they are in jail, neither Ukrainians nor the international community will have full confidence in Ukrainian leaders' democratic credentials.

3. As a result of the re-introduction of single mandate districts, for the first time in six years MPs will represent defined geographic areas. This offers a new opportunity to strengthen ties between elected leaders and voters. Across the political spectrum, these MPs should strive to learn and respond to the needs of their constituents.

4. NDI has called for a number of technical improvements to the electoral process. Among the most important are reforms to selection procedures for election commissioners and steps to ensure that voters are exposed to a diversity of opinions and media coverage of governing and opposition candidates.

In the next few weeks, NDI will issue more detailed recommendations based on the findings of its pre-election delegation and those of a team of staff experts who have been monitoring electoral processes in Ukraine since early September. NDI offers those recommendations and the statement here today in the spirit of supporting and strengthening democratic institutions and processes in Ukraine. Ultimately, it will be the people of Ukraine who will determine the credibility of their elections and the country's democratic development. NDI looks forward to working with them and Ukraine's friends and allies in the U.S. and Europe, including those here today.

Thank you for the opportunity to speak today.